

**REMARKS**

Reconsideration of the subject patent application is respectfully requested.

In the Final Office Action dated June 30, 2005, the Examiner has rejected all of the pending claims, indicating that claims 1 and 8-9 stand rejected under 35 U.S.C. §102(b) as being anticipated by Bradshaw et al. Additionally, claims 2-5, 7, and 18 stand rejected under 35 U.S.C. §103(a) based upon Bradshaw, et al. Claims 11 and 13 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Baughman. Claims 11 and 13-18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Ziegler et al. in view of Bradshaw et al.

Although a Final Office action has been issued, the Examiner is respectfully requested to reconsider the rejection of independent claim 1 and to consider the rejection of dependent claim 13, now amended as a combination of claims 11 and 13, and placed in independent form.

Independent claim 1 stands rejected under 35 U.S.C. §102(b) based on the contention that this claim is anticipated by Bradshaw et al. While the Examiner recognizes that the scallops (8) of Bradshaw et al. are not intended to limit the threaded advancement of the plug by means of abutment, the Examiner believes that these scallops (8) are capable of being used in the intended manner. While the "legal" basis of the Examiner's theory may exist, the structural realities of the Bradshaw et al. patent physically prevent the theoretical or hypothetical result the Examiner is trying to dictate.

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When the Examiner suggest that the scallops (8) of Bradshaw et al. are capable of being used in the intended manner, the first few questions that have to be asked include the following:

- How will this be done based on the Bradshaw et al. disclosure?
- What will be the nature of the structural changes to the cooperating parts?
- Will the closure plug (1) of Bradshaw et al. have to be redesigned?
- Is there support in Bradshaw et al. for any of these redesign possibilities?

It may be fine to quote a legal basis for a position, but somewhere the actual structures have to be capable of performing in the manner required. Assuming for now that a §102(b) rejection is proper if the prior art structure is "capable of being used in the intended manner", this is not the end of the discussion and only addresses part of the proof that would be required. In order to complete the rejection, the Examiner needs to explain how the structure of Bradshaw et al. is capable of being used in the intended manner, and this has not been done.

In an attempt to see if it is in fact possible to redesign the Bradshaw et al. plug as the Examiner suggests doing, the first consideration is to try and determine what, if anything, can be retained in terms of the Bradshaw et al. configuration and whether any or all of the cooperating parts can be salvaged in their present form. If we are not able to retain all of the current structural configurations and relationships of Bradshaw et al., then two fairly critical issues evolve. First, we find ourselves in the business of redesigning and transforming existing designs in order to try and meet the claimed invention. As a practical matter, this is only possible if we rely on hindsight knowledge.

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The second issue is whether there is any suggestion or support in Bradshaw et al. for any of the potential redesigns that have to be made. The Examiner suggests that any judgment on obviousness is in a sense necessary reconstruction based on hindsight reasoning. This premise is defended by suggesting that it is permissible so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made. This though still begs the question of how does one establish, prove, or document, what would be considered as being within the level of ordinary skill? In particular, when we are talking about a very specialized structure such as Bradshaw et al. and when there is nothing comparable in terms of its various design features, we are not going to find some general level of skill or knowledge with regard to this particular design concept and structure. Thus, any suggestion with regard to redesigning the Bradshaw et al. structure must come from within Bradshaw et al. and it simply does not exist.

Based on FIGS. 3 and 4 in Bradshaw et al., it is clear that scallops (8) do not and, importantly, cannot abut up against the drum end. This cannot and will not happen for two reasons. First, scallops (8) are too short axially to reach the drum end. Secondly, under surface (6a) bottoms out on bead (18), thereby limiting the axial travel of the plug into the flange. This means that we have to change to design of either the plug or the flange or the drum end or some combination of these three components.

Changing the design needs to have some direction, suggestion, motivation, or teaching from somewhere and there is nothing in Bradshaw et al. and nothing in any of the other cited references. Even if we agree to engage in speculation and play with the idea of redesigning plug (1) in order to try and create the claimed invention, now we are

using hindsight knowledge, we have no guidance on where to begin. Perhaps one would elect to simply elongate the axial dimension of the scallops so that they could abut up against the drum end before undersurface (6a) bottoms out on bead (18). The next question is how do we elongate the axial dimension of the scallops?

Since Bradshaw et al. describes lip (6) as being "circumferential", lip (6) is or at least starts out as a circular outer peripheral shape. Then, the scallops (8) are "downwardly formed" (column 2, line 19), resulting in the illustrated configuration. In order to axially elongate the scallops, there are a couple of possibilities. One possibility might be to significantly increase the diameter size of lip (6). Based on the drawings that are provided, it seems as if this outer diameter size would have to double in order to provide scallops of sufficient axial length. Another possibility might be to move the concave bend line for each scallop (8) inwardly, at least twice as far as what is now illustrated. As should be clear, neither of these hindsight design options is acceptable. The first option is not acceptable for aesthetic reasons as well as cost reasons. It makes no sense nor would anybody be motivated to double the outside diameter size of lip (6). The cost of material and wasted material would be excessive. Moving the bend line inwardly is also unacceptable because the inner surface of each scallop (8) would contact and interfere with the outer surface of bead (18) before sufficient axial depth could be achieved.

Continuing with this speculation, what if we reshape the plug with outwardly protruding portions and then bend those down? The problem here is the cost of creating the non-circular starting shape. There is though absolutely nothing in Bradshaw et al. or

any of the other cited references that would suggest any of this to one of ordinary skill in the art.

Suppose we reduce the axial height of collar (16). Then, we have to change the design of flange (10) by reducing its axial height. This in turn means fewer threads (12) for plug engagement and a resulting inferior connection that will likely not seal.

There simply is no way to do what the Examiner believes is "capable" within the realm of being reasonable, logical, etc. Clearly it is impossible for the scallops (8) to function as claimed without significant design changes that not only completely destroy the essence of the Bradshaw et al. structure and the intent of its configuration, but these redesigns can only be arrived at with hindsight knowledge and speculation. In view of these remarks and analysis, the Examiner is asked to reconsider his rejections of claims 1, 8, and 9 and to reconsider his reliance on Bradshaw et al.

With regard to the rejection of claims 11 and 13 based on Baughman and the rejection of claims 11 and 13 based on Ziegler et al. in view of Bradshaw et al., the Examiner is respectfully requested to reconsider the specific relationship recited in claim 13 with regard to the axial length of the projections relative to the desired torque and proper sealing gasket compression.

The subject patent application provides a very detailed discussion of the importance of matching the axial length of the projections to the selected gasket material relative to the desired or specified tightening torque. The focus of the invention is to allow visual inspection by the projections in abutment against the drum end surface and to have those projections sized precisely so that the appropriate and proper torque for proper gasket compression is achieved shortly before the projections abut up against the

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drum end. Claim 13 recites this interrelationship and this is believed to be novel and unobvious considering those references cited by the Examiner.

Even if we ignore all of the issues with regard to Bradshaw et al. and even if we ignore the fact that Baughman does not disclose a plurality of projections and even if we ignore the fact that amended claim 13 recites a threaded flange that is not part of the Baughman patent, we are still left with the fact that none of the cited references anticipate or render obvious the structural relationship between the axial length of the projections and the sequence wherein those projections contact the drum end after the desired torque has been achieved for proper sealing gasket compression.

With regard to the rejection of claims 11 and 13 based on Baughman, the Examiner correctly notes that Baughman does not teach the plurality of projections. The Examiner then suggests that the outer wall (51), as disclosed in the Baughman patent, could be formed with a plurality of projections. However, claim 13, as amended, recites that those plurality of projections are "spaced-apart". One cannot create outer wall (56/51) with "spaced-apart" projections. Further, one of the important design features set forth in the Baughman patent (column 6) is the need to encapsulate gasket (61) between walls (53) and (54). If the outer wall (56) is segmented with "spaced-apart" projections, then the focus of this particular design in Baughman et al. would be violated and there is clearly no basis nor any suggestion or reason to do so.

It is also noted that, while claim 13 recites a threaded flange constructed and arranged for assembly into the drum end, Baughman does not provide any such threaded flange.

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With regard to the rejection of claims 11 and 13 based on the combination of Ziegler et al. and Bradshaw et al., the questions with regard to Bradshaw et al. have already been addressed in conjunction with claim 1.

In view of the remarks and analysis set forth above and considering the various claim cancellations and amendments, the Examiner is respectfully requested to allow claims 1-5, 7-9, and 13-17 and pass those claims to issue.

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